

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	
	§	
DIABETES AMERICA, INC.,	§	CASE NO. 10-41521-H1-11
	§	
Debtor.	§	
H. MALCOLM LOVETT, JR.,	§	
PLAN AGENT,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	ADVERSARY NO. 12-_____
	§	
CARDINAL HEALTH, INC. D/B/A	§	
CARDINAL HEALTH	§	
PHARMACEUTICAL DISTRIBUTION,	§	
	§	
Defendant.	§	

**PLAN AGENT'S ORIGINAL COMPLAINT AND
OBJECTION TO CLAIM OF CARDINAL HEALTH, INC.**

**To the Honorable Marvin Isgur,
Chief United States Bankruptcy Judge:**

H. Malcolm Lovett, Jr., Plan Agent (the “Plan Agent”) under Diabetes America, Inc.’s (the “Debtor”) Second Amended Chapter 11 Plan of Liquidation (the “Plan”), files this Original Complaint and Objection to Claim of Cardinal Health, Inc. d/b/a Cardinal Health Pharmaceutical Distribution (“Cardinal”).

Parties and Jurisdiction

1. The Plan Agent may be served in this adversary through the undersigned counsel.
2. Cardinal is an Ohio corporation doing business in the state of Texas. Cardinal will be served with the complaint and summons at its local and principal business addresses: (i) 7052 Grand Blvd., Ste. 112, Houston, Texas 75247; and (ii) 7000 Cardinal Place, Dublin, Ohio

43017. Cardinal will also be served with the complaint and summons through its registered agent for service: CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114 and at its address listed in the Debtor's schedules: c/o Ellison & Tetz, 2211 Norfolk St., Ste. 510, Houston, Texas 77098.

3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (C), (H) and (O).

4. Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Relief is sought pursuant to 11 U.S.C. §§ 548, 550 and other applicable law.

Summary of the Plan Agent's Complaint

6. The Plan Agent seeks (i) to avoid certain pre-petition transfers made to Cardinal; (ii) to avoid any agreements obligating the Debtor to pay non-Debtor liabilities; and (iii) the disallowance of Cardinal's scheduled claim. The Plan Agent also seeks its fees, costs and interest in accordance with applicable law.

Statement of Relevant Facts

7. Prior to the petition date, Cardinal provided certain pharmaceutical-related goods and/or services to a non-Debtor affiliate, Diabetes Centers of America Pharmacy LLC ("DCOA Pharmacy").

8. The Debtor had no contractual relationship with Cardinal and received no benefit from the goods and services provided by Cardinal to DCOA Pharmacy.

9. Despite the foregoing, from 2007 to the petition date, the Debtor made the following payments to Cardinal based on DCOA Pharmacy obligations:

Check/Wire Transfer	Payment Date	Amount
ACH010209	01/02/2009	48,206.55
CK010909	01/09/2009	41,572.37
ACH011609	01/16/2009	57,895.80
Draft100907	10/09/2007	73,810.87
Draft101207	10/12/2007	25,235.52
Ck101907	10/19/2007	32,838.14
INV102607	10/26/2007	53,550.05
Ck110207	11/02/2007	51,919.80
CK110707	11/07/2007	1,961.06
CK110909	11/09/2007	36,322.01
INV111607	11/16/2007	45,783.94
Draft112707	11/27/2007	47,563.13
Draft113007	11/30/2007	88,992.97
Draft120707	12/07/2007	43,707.87
ACH121407	12/14/2007	26,833.84
Draft122107	12/21/2007	32,455.19
Draft122807	12/28/2007	50,712.77
Draft010408	01/04/2008	31,221.08
ACH011108	01/11/2008	73,268.17
ACH011808	01/18/2008	40,901.51
ACH012508	01/25/2008	35,885.51
ACH020108	02/01/2008	47,538.04
ACH020808	02/08/2008	44,911.31
ACH21508	02/15/2008	41,566.76
CK022208	02/22/2008	26,519.22
ACH022908	02/29/2008	46,041.83
CK030708	03/07/2008	46,002.07
CK031408	03/14/2008	49,625.89
ACH032108	03/21/2008	35,815.88
ACH032808	03/28/2008	71,154.87

Check/Wire Transfer	Payment Date	Amount
CK040308	04/04/2008	41,692.33
CK041108	04/11/2008	39,095.20
ACH04108	04/18/2008	42,627.77
CK042508	04/25/2008	49,655.99
ACH050208	05/02/2008	49,904.01
ACH050908	05/09/2008	2,154.26
CK050908	05/09/2008	40,627.84
CK051308	05/13/2008	7.43
ACH051608	05/16/2008	52,627.35
CK051608	05/16/2008	427.89
CK052308	05/23/2008	38,785.59
CK52308b	05/23/2008	380.09
CK053008	05/30/2008	47,154.47
CK060608	06/06/2008	27,088.92
CK061308	06/13/2008	74,098.61
CK062008	06/20/2008	34,470.96
ACH062708	06/27/2008	41,427.52
ACH070708	07/07/2008	50,684.28
CK071108	07/11/2008	39,793.07
CHK071808	07/18/2008	967.44
CK071808	07/18/2008	56,495.79
ACH072508	07/25/2008	47,862.52
CK080108	08/01/2008	51,558.31
ACH080808	08/08/2008	79,919.11
727630	08/08/2008	656.95
CK081508	08/15/2008	46,247.51
ACH082208	08/22/2008	730.81
CK082208	08/22/2008	38,553.49
ACH082908	08/29/2008	346.64
CK082908	08/29/2008	38,464.71

Check/Wire Transfer	Payment Date	Amount
ACH090508	09/05/2008	35,448.21
090509ACH	09/05/2008	33.80
CK091208	09/12/2008	48,689.57
ACH091908	09/19/2008	423.32
CK091908	09/19/2008	35,770.68
CK092608	09/26/2008	42,000.89
CK100308	10/03/2008	51,589.23
CK101008	10/10/2008	36,485.44
CK101708	10/17/2008	48,125.45
CK102408	10/24/2008	44,711.71
CK103108	10/31/2008	55,463.18
CK110708	11/07/2008	38,909.35
CK111408	11/14/2008	52,234.33
ACH112108	11/21/2008	43,794.63
ACH120108	12/01/2008	47,751.91
INV120508	12/05/2008	24,413.79
CK121209	12/12/2008	83,968.33
CK121908	12/19/2008	53,201.29
ACH122608	12/26/2008	55,386.85
ACH12310	01/23/2009	44,897.88
ACH013009	01/30/2009	78,064.76
020609	02/06/2009	64,306.40
CK021309	02/13/2009	102,254.93
ACH022009	02/20/2009	56,592.08
CK022709	02/27/2009	63,414.87
CK030609	03/06/2009	65,455.15
ACH031309	03/13/2009	44,051.93
CK032009	03/20/2009	51,666.76
ACH032609	03/27/2009	91,701.42
ACH040309	04/03/2009	70,724.27

Check/Wire Transfer	Payment Date	Amount
CK041009	04/10/2009	43,171.51
ACH041709	04/17/2009	52,855.40
CK042409	04/24/2009	54,459.94
ACH050109	05/01/2009	47,589.86
ACH050809	05/08/2009	53,292.66
12318	05/11/2010	10,000.00
12473	05/25/2010	3,500.00
12542	06/08/2010	3,500.00
12678	06/22/2010	3,500.00
12798	07/06/2010	3,500.00
12930	07/20/2010	3,500.00
13006	08/03/2010	3,500.00
13164	08/17/2010	3,500.00
13289	08/31/2010	3,500.00
13437	09/14/2010	3,500.00
13602	09/28/2010	3,500.00
Total		4,212,222.66

10. The Debtor filed its chapter 11 case on December 21, 2010 [Docket No. 1, Case No. 10-41521].

11. On February 4, 2011, the Debtor scheduled Cardinal as holding an unsecured, nonpriority claim in the amount of \$76,205.34 [Docket No. 96-5, Case No. 10-41521]. The Cardinal claim is based on DCOA Pharmacy's obligation.

12. On August 17, 2011, the Debtor entered into an Asset Purchase Agreement with EDG Partners Fund II, L.P. [Docket No. 265, Case No. 10-41521]. The Court approved the sale procedure, form of asset purchase agreement, form of notice, and bid protections on August 18, 2011 [Docket No. 267, Case No. 10-41521].

13. The Debtor filed its second amended disclosure statement and the Plan on September 1, 2011 [Docket Nos. 298 and 299, Case No. 10-41521]. On September 2, 2011, the Court entered an order approving the Debtor's disclosure statement [Docket No. 302, Case No. 10-41521]. On December 5, 2011, the Court entered an order confirming the Plan [Docket No. 368, Case No. 10-41521].

14. The Plan became effective on March 2, 2012.

15. Under the Plan, the Plan Agent is granted authority to file claim objections and bring avoidance actions on behalf of the Liquidating Debtor.

Fraudulent Transfers Under 11 U.S.C. § 548

16. All pre-petition payments to Cardinal, as well as all pre-petition agreements between Cardinal and the Debtor regarding the payment of DCOA Pharmacy's obligations, if any, should be avoided under 11 U.S.C. § 548. Specifically, the Debtor received less than reasonably equivalent value for the transfers/agreements. On the date of the transfers/agreements, the Debtor (i) was insolvent, or became insolvent as a result thereof; (ii) was engaged or was about to engage in business in which its property after the transfers/agreements was unreasonably small capital; and/or (iii) intended to incur or believed it would incur debts that it would be unable to repay.

17. Under § 550(a) of the Bankruptcy Code, the Plan Agent may recover the property transferred or the value of such transfer from "the initial transferee of such transfer or the entity for whose benefit such transfer was made." 11 U.S.C. § 550(a). Cardinal is the initial transferee and/or the intended beneficiary of the transfers. The Plan Agent requests that the Court enter a judgment: (i) avoiding all pre-petition transfers to Cardinal, as well as any pre-petition agreements obligating the Debtor to pay DCOA Pharmacy's obligations to Cardinal; and (ii)

ordering the immediate return of all pre-petition payments to Cardinal plus pre- and post-judgment interest.

Fraudulent Transfers under Texas Law

18. All payments to and agreements with Cardinal within 4 years prior to the petition date were made in violation of TEX. BUS. & COM. CODE ANN. § 24.001 *et seq.* Specifically, the transfers/agreements were made for less than equivalent consideration and the Debtor (i) was engaged in business for which the remaining assets were unreasonably small in relation to the Debtor's business; or (ii) reasonably should have known that the Debtor was incurring debts beyond its ability to repay them. TEX. BUS. & COM. CODE ANN. § 24.005. A creditor exists whose claim arose before or within a reasonable time after the occurrence of the transfers for whom the Plan Agent can act.

19. The transfers/agreements were also made without the Debtor receiving reasonably equivalent value in exchange for the transfers/agreements and the Debtor was insolvent at the time of the transfers/agreements. A creditor exists whose claim arose before the occurrence of the transfers/agreements for whom the Plan Agent can act. TEX. BUS. & COM. CODE ANN. § 24.006(a).

20. The Plan Agent seeks the return of all pre-petition payments to Cardinal and/or money damages against Cardinal pursuant to TEX. BUS. & COM. CODE ANN. § 24.008 and 11 U.S.C. § 550.

Objection to Claim

21. The Debtor scheduled Cardinal as holding an unsecured, nonpriority claim in the amount of \$76,205.34. The Cardinal claim is based on an obligation of DCOA Pharmacy and

should be disallowed in its entirety. Moreover, Cardinal's claim should be disallowed in accordance with 11 U.S.C. § 502(d) pending the repayment of all avoided transfers.

Attorneys' Fees

22. The Plan Agent requests an award of their reasonable fees and costs pursuant to TEX. BUS. & COM. CODE ANN. § 24.013 and other applicable law.

Request for Pre- and Post-Judgment Interest

23. The Plan Agent seeks pre-judgment interest on the value of all transfers from the date of transfer through the date of judgment at the rate of 5% per annum. The Plan Agent seeks post-judgment interest on all money damages awarded hereunder from the date of judgment until paid at the prevailing federal judgment rate.

Prayer

24. The Plan Agent requests that the Court enter judgment as set forth above, disallow Cardinal's scheduled claim, require the immediate return of all pre-petition payments to Cardinal and grant such other relief as is just.

Dated: June 26, 2012.

Respectfully submitted,

Porter Hedges LLP

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